

RECEIVED
CENTRAL FAX CENTER

NOV 08 2006

**Bayer HealthCare
Pharmaceuticals**

To Commissioner for Patents
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Fax (571) 273-8300 Pages 5 (including cover sheet)

Date November 2, 2006

From Susan M. Pellegrino

Fax (203) 812-6459 Tel. (203) 812-6450

Re U.S. Patent Application Serial No.: 10/788,792

Bayer Pharmaceuticals
Corporation

400 Morgan Lane
West Haven, CT 06616

Phone: (203) 812-6450
Fax: (203) 812-6459

E-mail:
susan.pellegrino.b@bayer.com

For U.S. Patent Application Serial No. 10/788,792

- 1) Reply to Office Action mailed on July 13, 2006
- 2) Fee Transmittal (PTO/SB/17) [IN DUPLICATE]
- 3) Certificate of Transmission under 37 CFR 1.8
- 4) Fax Cover Sheet

If you have any problems with the attached facsimile call (203) 812-6450.

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL TO WHOM IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AN EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT THE PRIVILEGED OR CONFIDENTIAL NATURE OF THIS MESSAGE IS NOT WAIVED BY INADVERTENT DISCLOSURE. ANY DISSEMINATION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

RECEIVED
CENTRAL FAX CENTER

NOV 08 2006

PTO/SB/97 (05-03)

Approved for use through 04/30/2003. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Certificate of Transmission under 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office

on November 8, 2006
Date


Signature

Susan M. Pellegrino, Reg. No. 48,972

Typed or printed name of person signing Certificate

Note: Each paper must have its own certificate of transmission, or this certificate must identify each submitted paper.

For U.S. Patent Application Serial No. 10/788,792

- 1) Reply to Office Action mailed on July 13, 2006
- 2) Fee Transmittal (PTO/SB/17) [IN DUPLICATE]
- 3) Certificate of Transmission under 37 CFR 1.8
- 4) Fax Cover Sheet

This collection of information is required by 37 CFR 1.8. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.8 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/17 (10-04v2)

Approved for use through 07/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

FEE TRANSMITTAL
for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$ 1,020.00)**Complete if Known**

Application Number	10/788,792
Filing Date	February 27, 2004
First Named Inventor	Deepa Eveleigh
Examiner Name	Walter Schlapkohl
Art Unit	1636
Attorney Docket No.	5152

RECEIVED
CENTRAL FAX CENTER**NOV 08 2006**

METHOD OF PAYMENT (check all that apply)		FEE CALCULATION (continued)																																																																																																																																																																															
<input type="checkbox"/> Check <input type="checkbox"/> Credit card <input type="checkbox"/> Money Order <input type="checkbox"/> Other <input type="checkbox"/> None <input checked="" type="checkbox"/> Deposit Account: Deposit Account Number: 13-3372 Deposit Account Name: Jeffrey M. Greenman The Director is authorized to: (check all that apply) <input checked="" type="checkbox"/> Charge fee(s) indicated below <input checked="" type="checkbox"/> Credit any overpayments <input checked="" type="checkbox"/> Charge any additional fee(s) or any underpayment of fee(s) <input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.		3. ADDITIONAL FEES Large Entity Small Entity <table border="1"> <thead> <tr> <th>Fee Code</th> <th>Fee (\$)</th> <th>Fee Code</th> <th>Fee (\$)</th> <th>Fee Description</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr><td>1051</td><td>130</td><td>2051</td><td>65</td><td>Surcharge - late filing fee or oath</td><td></td></tr> <tr><td>1052</td><td>50</td><td>2052</td><td>25</td><td>Surcharge - late provisional filing fee or cover sheet</td><td></td></tr> <tr><td>1053</td><td>130</td><td>1053</td><td>130</td><td>Non-English specification</td><td></td></tr> <tr><td>1812</td><td>2,520</td><td>1812</td><td>2,520</td><td>For filing a request for ex parte reexamination</td><td></td></tr> <tr><td>1804</td><td>920</td><td>1804</td><td>920</td><td>Requesting publication of SIR prior to Examiner action</td><td></td></tr> <tr><td>1805</td><td>1,840</td><td>1805</td><td>1,840</td><td>Requesting publication of SIR after Examiner action</td><td></td></tr> <tr><td>1251</td><td>110</td><td>2251</td><td>55</td><td>Extension for reply within first month</td><td></td></tr> <tr><td>1252</td><td>430</td><td>2252</td><td>215</td><td>Extension for reply within second month</td><td></td></tr> <tr><td>1253</td><td>980</td><td>2253</td><td>490</td><td>Extension for reply within third month</td><td></td></tr> <tr><td>1254</td><td>1,530</td><td>2254</td><td>765</td><td>Extension for reply within fourth month</td><td></td></tr> <tr><td>1255</td><td>2,080</td><td>2255</td><td>1,040</td><td>Extension for reply within fifth month</td><td></td></tr> <tr><td>1401</td><td>340</td><td>2401</td><td>170</td><td>Notice of Appeal</td><td></td></tr> <tr><td>1402</td><td>340</td><td>2402</td><td>170</td><td>Filing a brief in support of an appeal</td><td></td></tr> <tr><td>1403</td><td>300</td><td>2403</td><td>150</td><td>Request for oral hearing</td><td></td></tr> <tr><td>1451</td><td>1,510</td><td>1451</td><td>1,510</td><td>Petition to institute a public use proceeding</td><td></td></tr> <tr><td>1452</td><td>110</td><td>2452</td><td>55</td><td>Petition to revive - unavoidable</td><td></td></tr> <tr><td>1453</td><td>1,370</td><td>2453</td><td>685</td><td>Petition to revive - unintentional</td><td></td></tr> <tr><td>1501</td><td>1,370</td><td>2501</td><td>685</td><td>Utility issue fee (or reissue)</td><td></td></tr> <tr><td>1502</td><td>490</td><td>2502</td><td>245</td><td>Design issue fee</td><td></td></tr> <tr><td>1503</td><td>660</td><td>2503</td><td>330</td><td>Plant issue fee</td><td></td></tr> <tr><td>1460</td><td>130</td><td>1460</td><td>130</td><td>Petitions to the Commissioner</td><td></td></tr> <tr><td>1807</td><td>50</td><td>1807</td><td>50</td><td>Processing fee under 37 CFR 1.17(a)</td><td></td></tr> <tr><td>1806</td><td>180</td><td>1806</td><td>180</td><td>Submission of Information Disclosure Stmt</td><td></td></tr> <tr><td>8021</td><td>40</td><td>8021</td><td>40</td><td>Recording each patent assignment per property (times number of properties)</td><td></td></tr> <tr><td>1809</td><td>790</td><td>2809</td><td>395</td><td>Filing a submission after final rejection (37 CFR 1.129(e))</td><td></td></tr> <tr><td>1810</td><td>790</td><td>2810</td><td>395</td><td>For each additional invention to be examined (37 CFR 1.129(b))</td><td></td></tr> <tr><td>1801</td><td>790</td><td>2801</td><td>395</td><td>Request for Continued Examination (RCE)</td><td></td></tr> <tr><td>1802</td><td>900</td><td>1802</td><td>900</td><td>Request for expedited examination of a design application</td><td></td></tr> </tbody> </table>		Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid	1051	130	2051	65	Surcharge - late filing fee or oath		1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet		1053	130	1053	130	Non-English specification		1812	2,520	1812	2,520	For filing a request for ex parte reexamination		1804	920	1804	920	Requesting publication of SIR prior to Examiner action		1805	1,840	1805	1,840	Requesting publication of SIR after Examiner action		1251	110	2251	55	Extension for reply within first month		1252	430	2252	215	Extension for reply within second month		1253	980	2253	490	Extension for reply within third month		1254	1,530	2254	765	Extension for reply within fourth month		1255	2,080	2255	1,040	Extension for reply within fifth month		1401	340	2401	170	Notice of Appeal		1402	340	2402	170	Filing a brief in support of an appeal		1403	300	2403	150	Request for oral hearing		1451	1,510	1451	1,510	Petition to institute a public use proceeding		1452	110	2452	55	Petition to revive - unavoidable		1453	1,370	2453	685	Petition to revive - unintentional		1501	1,370	2501	685	Utility issue fee (or reissue)		1502	490	2502	245	Design issue fee		1503	660	2503	330	Plant issue fee		1460	130	1460	130	Petitions to the Commissioner		1807	50	1807	50	Processing fee under 37 CFR 1.17(a)		1806	180	1806	180	Submission of Information Disclosure Stmt		8021	40	8021	40	Recording each patent assignment per property (times number of properties)		1809	790	2809	395	Filing a submission after final rejection (37 CFR 1.129(e))		1810	790	2810	395	For each additional invention to be examined (37 CFR 1.129(b))		1801	790	2801	395	Request for Continued Examination (RCE)		1802	900	1802	900	Request for expedited examination of a design application	
Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid																																																																																																																																																																												
1051	130	2051	65	Surcharge - late filing fee or oath																																																																																																																																																																													
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet																																																																																																																																																																													
1053	130	1053	130	Non-English specification																																																																																																																																																																													
1812	2,520	1812	2,520	For filing a request for ex parte reexamination																																																																																																																																																																													
1804	920	1804	920	Requesting publication of SIR prior to Examiner action																																																																																																																																																																													
1805	1,840	1805	1,840	Requesting publication of SIR after Examiner action																																																																																																																																																																													
1251	110	2251	55	Extension for reply within first month																																																																																																																																																																													
1252	430	2252	215	Extension for reply within second month																																																																																																																																																																													
1253	980	2253	490	Extension for reply within third month																																																																																																																																																																													
1254	1,530	2254	765	Extension for reply within fourth month																																																																																																																																																																													
1255	2,080	2255	1,040	Extension for reply within fifth month																																																																																																																																																																													
1401	340	2401	170	Notice of Appeal																																																																																																																																																																													
1402	340	2402	170	Filing a brief in support of an appeal																																																																																																																																																																													
1403	300	2403	150	Request for oral hearing																																																																																																																																																																													
1451	1,510	1451	1,510	Petition to institute a public use proceeding																																																																																																																																																																													
1452	110	2452	55	Petition to revive - unavoidable																																																																																																																																																																													
1453	1,370	2453	685	Petition to revive - unintentional																																																																																																																																																																													
1501	1,370	2501	685	Utility issue fee (or reissue)																																																																																																																																																																													
1502	490	2502	245	Design issue fee																																																																																																																																																																													
1503	660	2503	330	Plant issue fee																																																																																																																																																																													
1460	130	1460	130	Petitions to the Commissioner																																																																																																																																																																													
1807	50	1807	50	Processing fee under 37 CFR 1.17(a)																																																																																																																																																																													
1806	180	1806	180	Submission of Information Disclosure Stmt																																																																																																																																																																													
8021	40	8021	40	Recording each patent assignment per property (times number of properties)																																																																																																																																																																													
1809	790	2809	395	Filing a submission after final rejection (37 CFR 1.129(e))																																																																																																																																																																													
1810	790	2810	395	For each additional invention to be examined (37 CFR 1.129(b))																																																																																																																																																																													
1801	790	2801	395	Request for Continued Examination (RCE)																																																																																																																																																																													
1802	900	1802	900	Request for expedited examination of a design application																																																																																																																																																																													
1. BASIC FILING FEE Large Entity Small Entity <table border="1"> <thead> <tr> <th>Fee Code</th> <th>Fee (\$)</th> <th>Fee Code</th> <th>Fee (\$)</th> <th>Fee Description</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr><td>1001</td><td>790</td><td>2001</td><td>395</td><td>Utility filing fee</td><td></td></tr> <tr><td>1002</td><td>350</td><td>2002</td><td>175</td><td>Design filing fee</td><td></td></tr> <tr><td>1003</td><td>560</td><td>2003</td><td>275</td><td>Plant filing fee</td><td></td></tr> <tr><td>1004</td><td>790</td><td>2004</td><td>395</td><td>Reissue filing fee</td><td></td></tr> <tr><td>1005</td><td>160</td><td>2005</td><td>80</td><td>Provisional filing fee</td><td></td></tr> </tbody> </table> SUBTOTAL (1) (\$)		Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid	1001	790	2001	395	Utility filing fee		1002	350	2002	175	Design filing fee		1003	560	2003	275	Plant filing fee		1004	790	2004	395	Reissue filing fee		1005	160	2005	80	Provisional filing fee		Other fee (specify) _____ *Reduced by Basic Filing Fee Paid																																																																																																																																											
Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid																																																																																																																																																																												
1001	790	2001	395	Utility filing fee																																																																																																																																																																													
1002	350	2002	175	Design filing fee																																																																																																																																																																													
1003	560	2003	275	Plant filing fee																																																																																																																																																																													
1004	790	2004	395	Reissue filing fee																																																																																																																																																																													
1005	160	2005	80	Provisional filing fee																																																																																																																																																																													
2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE <table border="1"> <thead> <tr> <th>Total Claims</th> <th>Extra Claims</th> <th>Fee from below</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Independent</td> <td>-20** =</td> <td>X</td> <td></td> </tr> <tr> <td>Multiple Dependent</td> <td>-3** =</td> <td>X</td> <td></td> </tr> </tbody> </table>		Total Claims	Extra Claims	Fee from below	Fee Paid	Independent	-20** =	X		Multiple Dependent	-3** =	X		Subtotal (2) (\$)																																																																																																																																																																			
Total Claims	Extra Claims	Fee from below	Fee Paid																																																																																																																																																																														
Independent	-20** =	X																																																																																																																																																																															
Multiple Dependent	-3** =	X																																																																																																																																																																															
Subtotal (3) (\$ 1,020.00)		Subtotal (3) (\$ 1,020.00)																																																																																																																																																																															

SUBMITTED BY		(Complete if applicable)	
Name (Print/Type)	Susan M. Pellegrino	Registration No. (Attorney/Agent)	48,972
Signature	<i>Susan M. Pellegrino</i>	Telephone	(203) 812-6450
		Date	November 8, 2006

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Attorney Docket No. 5152

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED
CENTRAL FAX CENTER

NOV 08 2006

In re Patent Application of Decpa Eveleigh, et al.

Serial No.: 10/788,792

Group Art Unit: 1636

Filed: February 27, 2004

Examiner: Walter Schlapkohl

For: Expression Profiles for Breast Cancer and Methods of Use

CERTIFICATION OF MAILING UNDER 37 C.F.R. 1.8(a)

I hereby certify that this correspondence and any papers referred to as attached are being facsimile transmitted to the U.S. Patent and Trademark Office at (571) 273-8300.

Date: November 8, 2006


Susan M. Pellegrino

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

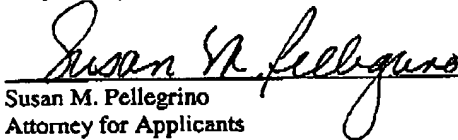
This is in response to the Office Action mailed July 13, 2006. In response to the restriction requirement, applicants elect the claims of restriction Group I, claims 2 and 5, directed to methods for providing a patient diagnosis and methods for distinguishing between normal and disease tissues comprising comparing the level of expression of one or more genes in a first biological sample with one or more genes in a second biological sample selected from SEQ ID NOs: 1-127, for further prosecution in this application. In addition, Applicants elect SEQ ID NOs: 1 and 44 for further prosecution in this application.

Applicants respectfully petition the Commissioner for Patents under the provisions of 37 C.F.R. 1.136(a) to extend the time for filing a response to the Office Action for three (3) month(s) from August 13, 2006 to November 13, 2006. Please charge the fee for the three-month extension of time to Deposit Account No. 13-3372.

If there are any fees due in connection with the filing of the present response, please charge the fees to undersigned's Deposit Account No. 13-3372. If a fee is required for an extension of time not accounted for, such an extension is requested and the fee should also be charged to undersigned's deposit account.

Respectfully submitted,

Date: November 8, 2006

Bayer Pharmaceuticals Corporation
400 Morgan Lane
West Haven, CT 06516
Telephone: (203) 812-6450
Susan M. Pellegrino
Attorney for Applicants
Reg. No. 48,972

11/09/2006 MWOLDGE1 00000071 133372 10788792

01 FC:1253 1020.00 DA